

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA

MICHAEL CROWELL,

Plaintiff,

v.

Case No. 1:17-cv-515-WO-JEP

STATE OF NORTH CAROLINA; ROY)

COOPER, Governor of North Carolina,)

in his official capacity only;)

BIPARTISAN STATE BOARD OF)

ELECTIONS AND ETHICS)

ENFORCEMENT; CHAIR,)

BIPARTISAN STATE BOARD OF)

ELECTIONS AND ETHICS)

ENFORCEMENT, *in official capacity*)

only; MEMBERS, BIPARTISAN STATE)

BOARD OF ELECTIONS AND ETHICS)

ENFORCEMENT, *in their official*)

capacity only;)

Defendants.

NOTICE OF STATE SUPREME COURT DECISION

In this lawsuit plaintiff challenges North Carolina law allowing only Democrats and Republicans to serve on the Bipartisan State Board of Elections and Ethics Enforcement and the 100 county boards of elections. In a related matter, on January 26, 2018, the North Carolina Supreme Court held in *Cooper v. Berger*, No. 52PA17-2, that the composition of the Bipartisan State

Board violates the separation of powers provision of the North Carolina Constitution. The opinion is attached.

The supreme court held that the requirement that four members of the eight-member board be members of the opposing political party infringes on the governor's ability to exercise effective supervisory authority over an executive branch agency. The opinion does not address the issue in this case — whether membership on the board may be limited to Democrats and Republicans — only the number of members of each party. Under previous law the board was comprised of five members, three of whom were from the governor's party and two from the other major party, and that restriction of membership to Democrats and Republicans has been the law since the board was first established over a century ago.

The state case is being remanded to the trial court for further proceedings. And it may well be that the General Assembly will revamp the State Board in light of the supreme court's decision, although plaintiff assumes that any change will perpetuate the exclusion of unaffiliated voters from the State Board. In any event, further action by this court at least should await conclusion of the proceedings in *Cooper v. Berger* on remand.

Plaintiff will confer with counsel for defendants and defendant-intervenors to determine whether the parties can agree on recommendations to the court on how to proceed following state court action on remand.

RESPECTFULLY SUBMITTED, this 2nd day of February 2018.

/s/ Michael Crowell

NC State Bar # 1029

1011 Brace Lane

Chapel Hill, NC 27516

919-812-1073

lawyercrowell@gmail.com

Plaintiff representing himself

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA

MICHAEL CROWELL,)
)
 Plaintiff,)
)
 v.) Case No. 1:17-cv-515-WO-JEP
)
 STATE OF NORTH CAROLINA, *et al,*)
)
 Defendants)

CERTIFICATE OF SERVICE

I certify that on February 2, 2018, I electronically filed this Notice of State Supreme Court Decision with the Clerk of Court using the CM/ECF system and have verified that such filing was sent electronically using the CM/ECF system to the following:

James Bernier, Jr.
Special Deputy Attorney General
Alexander McC. Peters
Senior Deputy Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602
apeters@ncdoj.gov
jbernier@ncdoj.gov
*Counsel for defendants State of North Carolina,
Bipartisan State Board of Elections and Ethics
Enforcement, and chair and members of the
Bipartisan State Board of Elections and Ethics
Enforcement*

D. Martin Warf
Noah H. Huffstetler, III
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
noah.huffstetler@nelsonmullins.com
martin.ward@nelsonmullins.com
Counsel for defendant-intervenors Berger and Moore

Brian D. Rabinovitz
Special Deputy Attorney General
Amar Majmundar
Special Deputy Attorney General
Olga E. Vysotskaya de Brito
Special Deputy Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602
brabinovitz@ncdoj.gov
amajmundar@ncdoj.gov
ovysotskaya@ncdoj.gov

This 2nd day of February 2018.

/s/ Michael Crowell
Michael Crowell, Attorney
NC State Bar No. 1029
1011 Brace Lane
Chapel Hill, NC 27516
919-812-1073
lawyercrowell@gmail.com

Attorney representing himself